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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-1014

**DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION—ADVERSE
ABANDONMENT—IN MINERAL COUNTY, CO**

REPLY OF THE CITY OF CREEDE

Three protests were filed to the City's Application for Adverse Abandonment, by the Denver & Rio Grande Railway Historical Foundation ("Foundation"), San Luis & Rio Grande Railroad Company ("SLRG"), and Wason Ranch. Although styled a protest," Wason Ranch actually supports the City's Application. Numerous comments were filed by residents and business owners from the City of Creede and from Mineral County. The vast majority of the commenters support the City's Application. No person requested the imposition of a trail use condition.

Neither the Foundation nor SLRG show any basis for denying the City's Application. Neither Protest shows any reasonable potential for freight shippers in Creede. At most, the Foundation alleges an insignificant amount of freight potential, three tank cars of magnesium chloride a year that may be shipped to the Creede area, and even this is speculative. Neither Protestant denies that, even if the Foundation could some day show freight potential, no track in the City would be needed to provide that freight service. It is undisputed that any freight traffic could be handled at Wason, just as it was when the Creede Branch was operated by the Denver & Rio Grande Western Railroad Company, before all operations on the Branch ceased. It is also undisputed that

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the Foundation does not own the land under the rights of way in the City.¹ No Protestant disputed that the City has compelling, legitimate interests in obtaining local control over this land and utilizing it for the public uses to which it has been put and other uses benefiting the City and its residents. Given these facts of record, a balancing of interests clearly requires granting the City's Application. The Protestants have failed to show how the public interest in avoidance of premature abandonment or the national transportation policy would be adversely impacted by approving the abandonment of a mile of track that has been out of service for more than 30 years. No shipper, real or imagined, has come forward to protest the City's Application.

The SLRG's Protest argues that the City's Application should be denied, because allowing the abandonment of the one mile of track at the end of the Creede Branch "present[s] a serious threat to the long term viability of the national rail infrastructure by chipping away pieces that are difficult." Protest at 6. In essence, the SLRG is arguing that no more abandonments of any track anywhere should be permitted. This argument clearly lacks any merit. Alternatively, SLRG asks that the Board suspend these proceedings indefinitely to allow it to an opportunity to submit an offer of financial assistance ("OFA") to acquire the track in the City in case SLRG might, some day, propose to offer intercity rail passenger service on its line and might extend this service to Creede. This request must be denied, because the Board exempted the City's Application from the OFA provisions. The Board's Notice of the City's Application is

¹ While the Foundation questions whether the City or the Colorado State Land Board have title to the land under the right of way in Section 36, Verified Statement of Donald Shank at 2, there is no question that the Foundation does not own this land and only has an easement.

quite explicit that “[b]ecause this is an adverse abandonment proceeding, OFAs and public use requests are not appropriate and will not be entertained.”

The City further requests that the Board act on its Application by May 1, 2008. The City requests a decision in this timeframe to avoid any question concerning the City’s ability to repair the damages caused by the Foundation to public streets, park, and parking area in advance of the 2008 tourist season and in order that definitive plans can be made for the Days of 92 festival, all as more fully explained in Part X.

I. The City Applied The Correct Standards

The Foundation first sets up a straw man by arguing that the City has applied the wrong legal standards to its case for abandonment. The Foundation characterizes the City’s case as one built on the “lengthy nonuse” of the Creed Branch and that the City’s “primary” argument is the “absence of shippers.” Protest, Tab 1 at 1, 3. The City’s Application is not premised primarily upon the long dormancy of the track or lack of shippers, although both are factually true. The City’s Application is based on the balancing analysis that the Board uses in adverse abandonment cases, including whether there is a realistic need for freight service, whether the public will be adversely affected, and the applicant’s interests. See, e.g., Seminole Gulf Ry. L.P.—Adverse Abandonment—in Lee County, FL, 2004 STB LEXIS 742, * 8 (served Nov. 17, 2004) (“we must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally.”).

It is the Foundation which has incorrectly applied the Board’s standards. The Foundation contends that “[i]t is a rail carrier’s intent and efforts to restore rail service

that are important in an adverse abandonment case, not whether the restored freight service would be profitable.” Protest, Tab 1 at 4. None of the adverse abandonment cases cited by the Foundation hold that the relevant inquiry is the carrier’s intent, a purely subjective inquiry. The Board’s standards are objective and can be applied without accepting the Foundation’s self-serving contention that it intends, some day, to restore freight service. As explained in the Board’s precedents, the inquiry is whether there is a present or future need for freight service and whether reasonable steps are being taken to attract freight traffic. Moreover, the Board looks behind the carrier’s assertions to make an independent assessment whether there really is a meaningful potential. For example, in Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corp.’s West 30th St. Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094), 8 I.C.C. 2d 773 (1992), 1992 WL 233599 (I.C.C.), aff’d, Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994) (hereinafter “Chelsea II”), the ICC did not simply accept Conrail’s assertion that the potential for hauling waste was practical or economical.

The Foundation is also in error in suggesting that the Board’s adverse abandonment precedents stand for the proposition that local governmental interests are to be given little or no weight, quoting from New York Cross Harbor Railroad v. STB, 374 F.3d 1177 (D.C. Cir. 2004) (hereinafter “New York Cross Harbor”). In all of those precedents, the carrier was still conducting operations over the line and/or existing freight shippers objected to the abandonment. New York Cross Harbor, 374 F.3d at 1179 (existing traffic and shipper protest) ; Seminole Gulf Rwy.—Adverse Abandonment—in Lee County, FL, 2004 STB LEXIS 742 at * 11 (“Seminole Gulf”) (existing traffic); Salt Lake City Corp.-Adv. Aband.-Salt Lake City, UT, 2002 STB LEXIS 150 at * 16-17

(existing operations); Western Stock Show Ass'n-Aband. Exemption-in Denver CO, 1 S.T.B. 113 at * 14 (1996) (current traffic); Wisconsin Dept. of Transp.—Abandonment Exemption, 1988 ICC LEXIS 359 at * 3-5 (existing traffic and shipper protest). Adverse abandonment was denied, not because the interests of state or local government were to be given little or no weight. but because their interests did not outweigh the federal interest in preserving existing rail service. Those are obviously not the facts here. There is no existing rail service to preserve.

The Foundation argues that “the absence of shippers currently moving rail freight over the line is not meaningful” Protest, Tab 1 at 3. It is obvious why the Foundation would want this to be so; there are no current shippers in Creede and have not been since at least 1970. But, the Foundation is, again, clearly mistaken. As shown in the very adverse abandonment cases cited by the Foundation, and listed above, the Board looks at whether there is current traffic and, if there is, typically denies the application. If there is not, that is also relevant, as recognized in Modern Handicraft, Inc.—Abandonment in Jackson County, MO, Finance Docket No. 29330, 363 I.C.C. 969 (1981) (hereinafter “Modern Handicraft”) and Chelsea II where adverse abandonment was granted.

The City is also not trying to shift the burden of proof to the Foundation. The City has the burden in the first instance to show that a balancing of interests supports adverse abandonment. The City has met that burden by showing that there are no existing shippers, that there is no realistic potential for freight shippers in Creede, that, even if potential future freight shippers could be shown (which they have not), the Foundation does not need any track in the City to provide freight service, and the City has compelling

interests. The burden shifted to the Protestants to show that there are potential freight shippers in Creede which would need the track in Creede. As the City next explains, neither Protest shows any such freight potential.

II. The City Has Demonstrated That There Is No Realistic Potential For Freight In Creede

As explained in the City's Application, the only two potential shippers that the Foundation identified in its discovery responses did not represent firm commitments to ship or receive anything at Creede. These were potential shipments of magnesium chloride by GMCO to Mineral and Hinsdale County and the shipment of cedar logs to Steve Baxter. Since the City's Application discredited this supposed potential, the Foundation's Protest is now suggesting two entirely new possibilities, outbound shipments of ore and of rock and specialty rock. The Foundation offers no support, no letters from shippers, for these new supposed potential sources of freight traffic. The Foundation's Protest also repeats magnesium chloride and cedar logs as potential. The City next addresses each of these four supposed potential sources of freight traffic and explains why they are not credible. The City also addresses the freight potential claimed by the SLRG, which did not identify any potential future shipper. This review shows that the Foundation has shown, at most, a potential for three tank car loads of magnesium chloride to be shipped annually to Mineral County, and that is speculative.

A. Resumption of Mining

Mr. Shank's latest claimed potential is the resumption of mining activities in Colorado, which he predicts will result in outbound shipments of ore over the Foundation's track. At best, Mr. Shank's claimed potential is conjecture, at worst outright fabrication.

As evidence of a resurgence of mining in Colorado, Mr. Shank states in his Verified Statement that a mine in Climax, Colorado is reopening and will use a tourist train to ship freight to a connection with the Union Pacific Railroad. He tries to tie this reopening to similar potential in the Creede area with his assertions that a wealthy Creede-area businessman will soon resume mining operations in the Creede area. He states in his Verified Statement as follows:

Much has been said over the fact that Brian Egoff recently purchased an estimated seven hundred mining claims in and around Creede and has already staked a large number of them, with plans to begin mining activity in the near future. The sale of this huge number of mining claims was validated in a conversation with the Mineral County Clerk and Recorder's Office in Creede and Rio Grande/Mineral County Title Company....

Shank VS at 18 (Protest, Tab 2). Although Mr. Shank does not offer any support for any of his contentions, the Freeport McMoran Company has in fact announced plans to reopen its molybdenum mine at Climax, Colorado. But, the fact that a molybdenum mine is reopening somewhere else in Colorado is not indicative that a resumption of mining is eminent in the Creede area or that, if it did resume, the Foundation's line would be used. The mines in the Creede area mined silver, lead, and amethyst, not molybdenum.

Mr. Shank also offers no corroboration for his assertion that the reopened Climax Mine will ship freight by rail over a tourist railroad in that area. Shank VS at 17-18 ("The sixteen mile-long railroad will now be hauling freight, in addition to its daily tourist train out of Leadville.".)² All of this is self-serving speculation by Mr. Shank. In fact, the Climax Mine does not intend to utilize rail to ship or receive any freight. The molybdenum will be processed at the mine site. This processing produces molybdenum

² Mr. Shank does not identify this tourist railroad, but it is the Leadville, Colorado & Southern Railroad. According to its web site, it only operates from late May to early October and runs between Leadville and Climax, Colorado. <http://www.leadville-train.com>.

concentrate, which is in dry powder form. The concentrate is transported in large “super sacks,” which can hold as much as two tons of concentrate. The Climax Mine intends to ship this concentrate by truck, not rail, to locations in the United States and to ports for export.³

As for his assertion that “much has been said” about Mr. Egoff’s purchases in the Creede area, it has only been said in Mr. Shank’s Verified Statement and is pure speculation. Significantly, Mr. Shank does not say that he spoke to Mr. Egoff. Nor does he provide a letter from Mr. Egoff corroborating his suppositions, indicating that he plans to begin mining operations soon or desires to use the Foundation for rail freight transportation. Moreover, the fact that Mr. Egoff may have purchased mining claims does not denote that mining is about to resume in the Creede area in the near future. The fact that a person purchases mining claims is not probative that that person intends to carry out any mining. The Board does not credit such unsupported claims as those made by Mr. Shank, treating them as “too indefinite and insufficient . . .” to be any indication of realistic freight potential. Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle, and Pitkin Counties, CO, 4 S.T.B. 116, 1999 WL 323347, at *3 and n. 17.

B. Outbound Shipments Of Rock and Rock Products

Another new potential mentioned by the Foundation for the first time in its Protest is “outbound shipments of bulk rock, specialty rock, and rock products to Texas and New Mexico. and for export to China” from the Last Chance Mine. Protest, Tab 4 at 2. The

³ Telephone conversation between Ronald M. Johnson, counsel for Creede, and Kurt Keskimaki, General Manager, Climax Mine (Feb. 14, 2008).

only support for this alleged potential are the following statements from the Shank

Verified Statement:

Jack Morris of Canon City, CO owns the famous "Last Chance Mine" in Creede. Jack anticipates shipping 100 + carloads annually of bulk rock, specialty rock and rock products annually to markets in Texas and New Mexico, and for export to China, as development and production increase over the next few years.

Shank VS at 18.

There is a famous Last Chance Mine, but not in Creede. It is in the mountains above Creede about four miles away. The Last Chance Mine was a famous silver mine. It closed in 1947 and then reopened a couple of times in the 1960's and 1970's. The dormant mine was purchased in 1997 by Mr. Morris, who had been a truck driver. Mr. Morris began using the Last Chance Mine site in 2002, not as an active mine, but as a seasonal tourist and historic attraction. The mine itself remains closed. As described in a travel article, for which Mr. Morris was interviewed, Mr. Morris has a few cabins where tourists can stay overnight and a gift shop. See Exhibit No. 37. Rock hounds are welcome to pick up rocks for a fee or in some cases no fee. Mr. Shank is misleading the Board by stating that there is any actual production or shipment of rocks from the Last Chance Mine (besides what tourists take). There is no such production or shipment occurring. Pictures of the Last Chance Mine are in Exhibit No. 37. As they show, there is no large rock production going on there as suggested by Mr. Shank.

Again, as with the claimed mining potential, the Foundation does not provide any corroboration, no letter from Mr. Morris or any details about when these supposed rock shipments would begin or where they would go.

C. Inbound Shipments Of Magnesium Chloride

In its discovery responses in this proceeding, the Foundation cited potential shipments of magnesium chloride by GMCO to Crede for delivery to Mineral County and Hinsdale County, as it did in the OFA proceedings in Docket No. AB-33 (Sub-No. 132X). Indeed, this was the only freight potential that the Foundation could point to in Docket No. AB-33 (Sub-No. 132X). The only support for this claimed potential in the Foundation's December 3, 2007 discovery responses, which are in Exhibit No. 12 to the City's Application, was the same letters from GMCO and the road supervisors of Mineral and Hinsdale County from 2003 that the Foundation obtained back when the City and others challenged the need for freight service in the OFA proceedings. See Exhibit No. 12, pages 190-95. In those discovery responses, the Foundation predicted shipments of 12-15 carloads annually by GMCO each for Mineral County and Hinsdale County.

The City pointed out in its Application that these letters from 2003 did not show any commitment by GMCO to use the Foundation. The City also pointed out that there was no potential for rail shipments for Hinsdale County over the Foundation and that, at most, Mineral County uses one tank car per year of magnesium chloride. See Application at 39.

In its Protest, the Foundation no longer asserts shipments for Hinsdale County as a potential. The Foundation also does not deny that Mineral County only uses one tank car per year. Having seen the City's contentions in its December 17, 2007 Application, that the 2003 GMCO letter was not indicative of freight potential, Mr. Shank apparently called up GMCO and asked for a new letter. GMCO obliged with a letter dated January 15, 2008, which is attached as Exhibit 1 to the Shank Verified Statement. But, again,

this GMCO letter is not a commitment to use the Foundation for rail freight transportation anymore than the 2003 letter was.

Moreover, the new letter from GMCO does not even back up the freight potential claimed by the Foundation. While the Foundation claimed in its discovery response a potential of 12-15 tank cars would be shipped annually by GMCO to Mineral County , the new GMCO January 15, 2008 letter only estimates “three to five 100 ton tank cars of magnesium chloride dust control materials per year to that location to treat roads in Mineral County.” See Application, Exhibit No. 12, page 183. Incidentally, the Foundation does not have any letter from Mineral County this time around, which voted not to provide a letter of support for the Foundation. See Exhibit No. 38.

GMCO also projected in its January 15, 2008 letter that it “would ship thirty plus cars to South Fork to service Archuleta County.” These cars, even if they were to materialize, would not move over the Foundation’s track. South Fork is the western end of the SLRG’s line. Archuleta County is on the other side of the Continental Divide, is west and south of Creede, and is reached via Highway US 160 from South Fork. In other words, the Foundation’s tracks do not go to Archuleta County. At South Fork, the magnesium chloride would be transloaded into trucks for the rest of the movement over US 160 to Archuleta County, not interchanged to the Foundation.

D. Inbound Shipments Of Cedar Logs

The Foundation’s Protest again refers to alleged shipments of cedar logs to Mr. Steve Baxter in Creede. Protest at 18-19; Shank VS at 18-19. The Foundation does not deny that, as the City explained in its Application, and supported this explanation with a letter from Mr. Baxter, this potential is entirely speculative, because Mr. Baxter has not

yet started a business that would need any kind of freight service and that Mr. Baxter has made no commitment of any kind to use the Foundation in the event that he does. And, even then, the Foundation is only estimating one or two car loads a year of cedar logs.

E. Freight Potential Claimed By SLRG

SLRG states in its Protest that “[t]he City’s application contains numerous suggestions but no proof, that there is no demand for rail freight service on this line.”

Protest at 10. As detailed above, the City’s Application contains more than “suggestions.” For its part, the SLRG does not identify any such potential.

First of all, when the SLRG speaks of the “line,” it is clear from its comments that it is referring to the entire 21-mile Creede Branch. See SLRG Protest at 4. But, the City is only seeking abandonment of the track in the City, not the entire line. Consequently, the City does not have to show that there is no potential for freight service on the entire Branch, but only with respect to the track that is the subject of its Application.

The SLRG states that “the SL&RG is actively working to attract new freight customers to its railroad, and has actively worked with numerous potential shippers of oil and gas field commodities in the area around Creede.” Protest at 8 (emphasis added). The fact that SLRG is actively seeking to “attract” new freight customers to “its railroad” says nothing about whether there is a need for rail freight service in Creede. And who are the “numerous potential shippers of oil and gas commodities” that SLRG hopes to “attract”? SLRG does not say. What will they ship by rail? Again, SLRG does not say. Where are they? What does SLRG mean by “in the area surrounding Creede”? The “shippers” or the “oil and gas field commodities”? If SLRG means Mineral County, in which Creede is located, there are no oil and gas fields or facilities in Creede or Mineral

County, besides “Gifts and Gas” in Creede, which is the only filling station in Mineral County, or Freeman’s Market, adjacent to Freeman’s dude ranch, which is about 20 miles west of Creede and where you can get an excellent hamburger and also fill up your gas tank.

SLRG says that it “would be willing to share this information with the City upon execution of a confidentiality agreement.” But, under the Board’s procedural schedule, the burden was on SLRG, as a protestant, to put its entire case in by January 31, 2008. 73 Fed. Reg. 930 (Jan. 4, 2008) (“Any interested person may file written comments . . . or protests (including the protestant’s entire opposition case), by January 31, 2008.”).

SLRG does not offer any valid reason it should be excused from the procedural schedule, except to say that 27 days from the Board’s procedural order to the January 31, 2008 deadline was insufficient time for SLRG “to develop any credible public need evidence.” Protest at 10. Without citing any authority, SLRG also states that “due process” requires that it be given the chance to develop a record. SLRG has been on notice since at least June 6, 2007, when the City filed its Petition for Exemption and Waiver, that an adverse abandonment application was going to be filed. SLRG again had notice when the Board, by order served October 18, 2007, granted the City’s Petition and again when the City filed its Application on December 17, 2007. SLRG, and its parent, are represented by experienced counsel and surely regularly monitor the Board’s web site for new filings and decisions. SLRG also had notice throughout November 2007 because notice that the City was going to file an application for adverse abandonment was published daily in the Valley Courier, which is the local newspaper in Alamosa,

Colorado, where SLRG is headquartered. It is simply not credible that SLRG did not have ample notice and opportunity to prepare its case, if it had one.

In sum, no Protestant has shown any realistic freight potential in Creede or that it would not be economically feasible to ship the few cars speculated by the Foundation once a year on the Branch, when they can be moved by rail to Monte Vista on the SLRG and transloaded to trucks at that location.

III. It Remains Undisputed That The Tracks In The City
Are Not Needed For Freight Service

As explained, neither the Foundation nor SLRG show any realistic freight potential in Creede. They do not allege that there will be any business in the City limits that will need rail freight service. Besides being entirely speculative, all of the freight potential alleged by the Foundation is outside of Creede. There is no facility in the City for the transfer of ore or rock to trucks. There is no need for trucks carrying ore or rock to even come into the City. Such truck traffic would come down from the mountains on a road called Bachelor Loop. Bachelor Loop joins Colorado Highway 149 a couple of miles west of town. The truck traffic could stay on Highway 149 going east to South Fork, which is the western terminus of the SLRG. Ore and rock could be transferred to rail cars at that location. Or, if the Creede Branch were ever rehabilitated, the trucks could travel over Highway 149 to Wason, where freight was transferred to rail cars when the Branch was operable. In any event, there is no need for a train to come into the City for such loading.

Such loading facility would create enormous environmental, traffic congestion, and safety issues, if located in the City. As the photographs in Exhibit No. 6 to the City's Application show, Creede is a very small town. A rail loading facility anywhere in town

would create any number of issues. This may be why, for the last 15 years of the Branch's operation, freight was trucked to a loading facility at Wason.

The only reason cited for why track in the City might be needed is for tourist train loading and unloading. Verified Statement of Edwin Ellis at 7. As explained in the City's Application, this should not be a factor in evaluating the City's Application. The public convenience and necessity standard relates to interstate freight transportation, not tourist train convenience.

IV. The Foundation's Rehabilitation Efforts Do Not Preclude Adverse Abandonment

The Foundation expends a goodly amount of its Protest and the Shank Verified Statement and Exhibits describing its efforts to rehabilitate the Creede Branch. These efforts, however, are irrelevant to the City's Application. The City does not base its Application on the lack of progress on track or other rehabilitation.

As explained above, the Foundation has done next to nothing over the last eight years in the way of trying to attract freight traffic to the Branch. Indeed, Mr. Shank admits that the Foundation has not been seeking freight shippers. "We have taken the position that until we can definitively establish a date whereby we can offer freight service, and the heavy tonnage associated with it, we will not beat the bushes seeking shippers until we know we can reliably and safely deliver." Shank VS at 17. Because the Foundation does not have a story to tell about such efforts, the Foundation argues that, "[w]here, as here, rail service is proposed to be reinstituted over a long dormant rail line, 'reasonable steps to attract traffic,' as that term is used in Board decisions on the subject matter, consists primarily of track rehabilitation to enable restoration of service." Protest at Tab 4, page 2. The Foundation does not cite any Board decisions to support

this argument. Board precedent actually holds that, where the line has been out of service, there is a greater burden on the proponent of restored service to show actual, not speculative or insubstantial shipper interest and support. See, e.g., Roaring Fork Railroad, 1999 WL 323347 (S.T.B.) at * 2 (“Where, as here, the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service.”).

Moreover, the Foundation’s rehabilitation efforts are not indicative of any effort to attract freight, because, as the City explains in its Application, and the Foundation does not deny in its Protest, it is really interested in starting a tourist train. This is why it acquired the Creede Branch. A read of the Mr. Shank’s Verified Statement again confirms that that is his intent.

While the City is not relying on the Foundation’s lack of progress, the City notes that the assertion in the Foundation’s Protest that “the Creede Branch is now operable for rail passenger operations into Creede” is false, as shown by the Protest itself and the Shank Verified Statement. Passenger operations cannot be conducted over the Branch until the track has been brought up to FRA Class I standards. The Protest elsewhere recognizes that that has not been achieved yet. Protest at Tab 4, page 3 (“The Foundation will apply for such grants or loans to fund the crosstie replacement necessary for FRA Class I track compliance.”). See also Shank VS at 10-11. As Mr. Shank also explains, engineering studies have yet to be done which will indicate what kinds of repairs need to be done to the railroad bridges on the Creede Branch. Shank VS at 8.

V. Board Precedent Does Not Support The Foundation's Claimed Freight Potential

The Foundation argues that the City's Application should be denied because the freight potential identified in the Foundation's Protest greatly exceeds the potential that was the basis for denying adverse abandonment in other Board precedents. Protest at Tab 4, page 4 . This argument is without merit.

The Foundation argues that it demonstrated more freight potential than the carrier in Seminole Gulf. In Seminole Gulf, the Board found that the carrier had shown efforts to attract freight by producing a letter from a potential shipper, Ringling Brothers, which also opposed the abandonment, and a verified statement from the carrier's president listing additional potential shippers. There is no similarity between Seminole Gulf and the City's Application.

First, the carrier there needed the track that was the subject of the adverse abandonment to provide service to an existing shipper and to the potential new shippers. The adverse abandonment petition applied to the entire line and, if granted, would have precluded any freight operations over the line. In contrast, here, the City is only seeking abandonment of the track in the City. As explained, the Foundation does not contest that it does not need the track in Creede to provide freight service to its alleged potential shippers. Thus, granting the City's Application will not interfere with any freight operations the Foundation might one day have.

Second, Seminole Gulf could point to actual existing companies that had an interest in shipping freight. The potential alleged by the Foundation is extremely speculative at best.

Third, Seminole Gulf is an existing, profitable railroad, and the Board noted that “[t]his is not a line that is inoperable or needs major repairs, and unlike many cases where adverse abandonment applications have been granted, this case involves a line that is presently carrying traffic.” 2004 STB LEXIS 742, * 11. The Foundation has never had any rail operations, profitable or otherwise, and concedes that the track in the City, indeed the entire Creede Branch, is inoperable and needs major repairs.

The Foundation also relies heavily on Riverview Trenton Railroad Co.-Petition for Exemption from 49 U.S.C. 1901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (served Nov. 30, 2007) (“Riverview Trenton”). Protest, Tab 1 at 2-3, and Tab 4 at 4-5. This decision also does not provide solace to the Foundation.

The Board there found that steps that being taken by the Riverview Trenton Railroad to begin freight operations were sufficient to deny a petition to revoke its operating authority. These steps, according to the Foundation, included hiring consultants, beginning to clean ballast, obtaining permission to reopen a crossing, planning for rehabilitation, etc. Protest, Tab 1 at 2. The Foundation argues that since it is doing way more than Riverview Trenton, that decision “dictates denial of adverse abandonment in the case at hand.” Protest, Tab 4 at 4. In that case, a non-carrier had been granted operating authority to convert what was a private carrier operation into a common carrier operation. The applicant owned the track and proposed to establish a new intermodal facility and hold itself out as a common carrier. The circumstances of Riverview Trenton are nothing like those presented by the City’s Application.

First, that case did not even involve an application for adverse abandonment. It involved a petition to revoke operating authority based on allegations that the non-carrier was seeking carrier status as a sham to avoid local governmental efforts to condemn the non-carrier's property.

Second, the Foundation overlooks that the Board had previously required the carrier to present evidence of shipper interest before the Board would grant operating authority. The Board revoked a class exemption and required the carrier to file a petition for exemption so a record could be made. Riverview Trenton Railroad Co.-Acquisition and Operation Exemption—Crown Enterprises, Inc., STB Finance Docket No. 34040 at 8 (served Feb. 15, 2002) (“require additional scrutiny and the development of a more complete record”). The Board specified that “[i]n its additional comments, RTR should support those arguments with evidence from those who would benefit from the interchange service.” *Id.* at 10. In the subsequent proceedings on its petition, Riverview Trenton “submitted supporting statements from auto manufacturers and other shippers, motor carriers, and logistics and ocean carrier interests. RTR also submitted witness statements arguing that the planned intermodal terminal is feasible, will have important transportation benefits, and will benefit the environment by diverting traffic from trucks to railroads.” Riverview Trenton Railroad Co.—Petition for An Exemption From 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 at 5 (served May 15, 2003) (“Riverview II”). Apparently, 50 companies provided letters that they would use the proposed intermodal facility. City of Riverview v. STB, 398 F.3d 434, 439 (6th Cir. 2005). Based on this record, the Board found that “[t]here is evidence that the Detroit area needs increased intermodal

development and that RTR's project will help to meet this need." Riverview Terminal II at 11.

How does this record compare to the Foundation's evidence? The Foundation has submitted a letter from only one would be shipper, GMCO, indicating that it might ship three tank cars a year to the Creede area.

Riverview Terminal is also not comparable to the City's case, because the governmental interests there wanted to remove Board jurisdiction in able to condemn the carrier's property, thus precluding the carrier from pursuing its plan for an intermodal facility. Here, the City is seeking to remove Board jurisdiction to obtain local control over publicly-owned property, and the relief sought by the City will not preclude the Foundation from offering freight service on the Creede Branch.

Although the Foundation tries to distinguish them, the relevant Board precedents are Modern Handicraft and Chelsea II. As in those cases, there is no future potential for freight service over the track at issue, here the track in the City. The City's case is even more compelling than the governmental interests in those cases because the property is publicly owned and in the middle of town.

VI. The City Is Not The Reason The Foundation Has Not Been Able To Restore Service On the Branch

As the City predicted, the Foundation tries to blame the City for its failure to rehabilitate the Branch. Specifically, Mr. Shank contends that the City's opposition has scared off investors, Shank VS at 16-17, and the City's "orchestration of opposition caused denial of the Foundation's grant application to the Colorado State Historic Fund for more than \$ 200, 000" to purchase used railroad ties in 2002. Protest, Tab 4, page 3; Shank VS at 16. As with just about every other contention in the Foundation's

Protest, the Foundation provides no support for its allegations that would- be investors were scared off or grants turned down because of the City.

What the Foundation's complaints do confirm is that the Foundation never had the financial resources to acquire and rehabilitate the Branch. This is made painfully clear by the Foundation's history of trying to persuade federal and state agencies to hand over millions of dollars in public monies to finance the Foundation's activities. Indeed, the Foundation's Protest and Mr. Shank's Verified Statement make clear that the Foundation's only hope for completing restoration of the Branch and starting operations is to secure federal and/or state grants from some organization. Shank VS at 10-11 and Exhibit 6 thereto. The Foundation's repeated and continuing efforts to secure public financing also demonstrate that the Foundation mislead the Board in Docket No. AB-33 (Sub-No.132X), where it asserted that it had the financial resources to restore the Creede Branch.

Thus, the record shows that the Foundation has no shippers, no shipper prospects, no investors, no reliable or significant source of revenues and is banking at this point on scoring grant funds from some hapless public agency. These are the reasons that the Foundation is not making progress, not the City's opposition.

VII. A Balancing of Interests Clearly Support the City's Application

Neither the Foundation nor SLRG deny that the City has compelling interests, because of the strategic location of this land, the need to continue the public uses to which it has long been put, and the need to be able to regulate and plan for the development of this land in ways beneficial to the City.

Neither Protestant makes a case that abandonment of the track in the City is adverse to the national public transportation policy or interstate commerce generally. SLRG does seem to argue that no abandonments should be allowed until the Nation achieves energy independence, but that argument is without merit and cannot be taken seriously.

Neither Protestant has been able to identify any realistic freight potential. They also do not dispute that the track in the City is not needed to provide freight service in the unlikely event the Foundation were ever able to complete restoration of the Branch and identify some freight potential.

The record in the proceeding overwhelming shows that a balancing of the factors considered in adverse abandonment cases requires granting of the City's Application.

**VIII. The SLRG's Request to Make An Offer Of Financial Assistance
Must Be Rejected**

If the City's Application is not rejected, SLRG contends that that it should be allowed to present an offer of financial assistance to acquire the one mile of track in the City from the Foundation. It is hard to tell what the SLRG is really up to. SLRG has been a business partner of the Foundation in offering a passenger excursion train on the SLRG. In any event, SLRG's request must be denied because the Board has already exempted the City's Application from the OFA procedures and indicated that offers to acquire the track through the OFA process will not be entertained.

SLRG's request should also be rejected because the OFA process is only to acquire rail lines for the purpose of providing freight service. See, e.g., Roaring Fork, 1999 WL 323347 (S.T.B.) at *2. SLRG is not proposing to provide freight service over the one mile of track in the City.

Finally, SLRG's request is speculative and clearly impractical. First, SLRG is not actually proposing to offer intercity passenger service on its line. It is only contemplating that possibility. SLRG will not make such a proposal unless a feasibility study, which is yet to be done, indicates that there is a need for such rural intercity passenger service. There is no assurance that this study will be conducted, yet alone show that intercity passenger service on the SLRG's line is needed or would be viable. SLRG has applied for a grant to pay for 80 percent of the study. While, according to SLRG, it has invested \$ 8 million on track, equipment and maintenance since 2005 (for freight service), it is apparently unwilling to pay the \$ 27,500 estimated cost of the study. It wants the taxpayer to foot the bill for most of the study. The scope of the study does not even apply to possible service to Creede, but only to SLRG's line.

SLRG is only proposing to propose to offer passenger service to Creede, if the study is done, the study indicates a viable basis for the service on SLRG's line, SLRG decides to offer that service, the Creede Branch is restored to at least class I standards, and SLRG and the Foundation come to some kind of terms. To say this is speculative is an understatement.

A study is not needed, though, to see that restoring regular passenger service to Creede is completely impractical (which is why it ceased back in 1939). Suspending disbelief for a moment that the Foundation could raise the several millions of dollars still needed to restore the Creede Branch, track and bridges, to class I standards, which is all the Foundation is shooting for, the maximum speed under Federal Railroad Administration regulations for class I track is 15 miles per hour. At that speed, it would take almost two hours just to travel the 21 miles from Creede to South Fork by train. One

can drive all the way from Creede to Alamosa an hour and a half! So, how would it be more convenient to take the train from Creede to Alamosa, or any other town on the SLRG? Where, by the way, one would still need a car when they arrived to run errands, shop, etc. And how many of Creede's 490 residents are going to use this new train service?

SLRG's request that it be allowed to submit an OFA for the one mile of track in the City is clearly improper and must be denied.

**IX. The Foundation's Request To Strike Or Ignore
Unfavorable Comments Is Without Merit**

The Foundation requests that the Board strike comments filed by various individuals, which support the City's Application, arguing that "[t]here is no provision for such filings in the Board's procedural schedule." Protest, Tab 1, at 2 n. 1.

Alternatively, the Foundation argues that they should be given no weight. The Foundation's requests are without merit and should be denied.

The Foundation says that it received "letters filed by businesses and individuals of Creede, uniformly expressing the opinion there is no need for rail freight service in Creede." Actually, as their reading shows, they were not all from businesses and individuals in Creede. They were also from businesses and individuals who live outside of Creede in Mineral County. And, they were not "uniformly" in favor of the City's Application, although they were overwhelmingly so. Two were from individuals who supported the Foundation and opposed the City's Application. The Foundation is not proposing that these comments be stricken or ignored, just the ones that favor the City's Application.

The Foundation's contention that these comments are not allowed by the Board's procedural schedule is feckless. The Board's notice of the City's filing, served and published in the Federal Register on January 4, 2008, expressly states that "[a]ny interested persons may file written comments concerning the proposed abandonment or protests . . . by January 31, 2008." The Board's procedural notice did not specify that such comments had to be in any particular format, only that they identify the commenter, be served on the parties, and an original and ten copies provided to the Board. The Board's procedures also allow persons to file comments in abandonment proceedings and it is not uncommon that they do so.

The City did not "orchestrate" these comments. Individuals made their own decisions whether to file comments and what to say. A review of the comments shows that they are not identical or formulaic. They express different views on why they support, or oppose, the City's Application. For those individuals who asked for assistance, the City did assist to ensure their compliance with the Board's service and other requirements set out in the Federal Register Notice.⁴

There is similarly no basis for the Foundation's alternative request that these comments "be given no weight inasmuch as they represent the unsupported opinion of unqualified individuals." The residents and businesses in and around Creede are qualified to report that there are no businesses in Creede that require or need rail service, now or in the future. They are familiar with the nature of the area economy and whether it is likely to attract businesses that would need rail service. For those who have lived in Creede for

⁴ Needless to say, most people in Creede and elsewhere do not read the Federal Register. Also, there is not a Kinko's or any such place in Creede where people can easily have ten copies of documents made.

many years, they confirm that after the railroad pulled out of Creede, until the end of all freight service on the Creede Branch, freight was loaded onto rail cars at Wason. Their views are also directly relevant to the impact on the community from the proposed abandonment, a factor considered by the Board. See, e.g., 49 C.F.R. § 1152.22 (e). The views of the community on how the publicly owned land under the right of way could be put to use to better serve the City, its residents and businesses are also relevant.

Finally, the number of comments, and that they overwhelmingly support abandonment, demonstrate that the City's Board of Trustees is representing the desires of the majority of Creede residents in pursuing this Application, not those of a few wealthy elites, as the Foundation would have the Board believe. Indeed, shortly before the Foundation's Protest was due, Mr. Shank requested the Mineral County Commission to hold a special meeting so he could ask that the County provide a letter in support of the Foundation, which he could use in these proceedings. At the January 23, 2008 public meeting held at the Mineral County Courthouse, after hearing from Mineral County citizens, the vast majority of those present opposing Mr. Shank's request, the Mineral County Commissioners voted unanimously *not* to provide a letter of support. See Exhibit No. 38.

Thus, these comments are part of the official record of these proceedings and must be considered.

X. The City's Need For Expeditious Treatment

Finally, the City is requesting that the Board decide the City's Application by May 1, 2008. The City needs to make arrangements for the repair of the damages caused by the Foundation to city streets, the City Park and children's playground. It is still

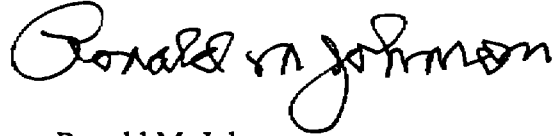
Winter, of course, in Creede. However, by May, the snows should be gone from town and the ground will not be too wet for the construction work that needs to be done. The City needs to make arrangements with a contractor to have this work scheduled and done in a timely fashion. The City also needs to repair the streets before the tourist season begins, which traditionally starts around Memorial Day. The City also needs to restore the public parking area, which was taken up the Foundation, in advance of the tourist season. As the City explained in its Application, this was the only significant off-street public parking in the down town area.

The City also needs certainty to be able to plan and make arrangements for the Days of 92 Festival, which is held on July 4. The events center needs to be restored and arrangements need to be finalized with vendors, which will set up booths for the Festival. The Foundation states that it will allow the events center to be brought back for this event. However, the City cannot be at the whim of the Foundation. Moreover, the Foundation has no legal say in how the land under the right of way is used for non-rail purposes. These decisions rest with the City and the Colorado State Land Board, which granted the right of way to the railroad, but only for railroad activities. The public parking area also must be restored in order to support the traffic associated with the Days of 92 Festival.

Conclusion

For the reasons stated in the City's Application and this Reply, the City's Application should be granted.

Respectfully submitted,

A handwritten signature in black ink that reads "Ronald M. Johnson". The signature is written in a cursive, flowing style.

Ronald M. Johnson
Heidi Gunst
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
202-887-4114

Dated: February 15, 2008

Counsel for City of Creede, Colorado

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the Reply of the City of Creede, Colorado and related exhibits in Docket No. AB-1014 to be served upon the following individuals by UPS overnight delivery, this 15th Day of February, 2008.

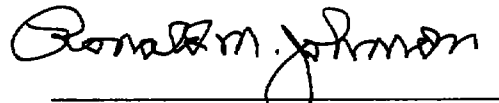
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Colorado Public Utilities Commission
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Washington, D.C. 20006
Counsel for San Luis & Rio Grande Railroad



Ronald M. Johnson

Exhibit No. 37

Another chance for the Last Chance Mine

Another chance for the Last Chance Mine

Article by Steve Voynick

Mining - July 2006 - Colorado Central Magazine - No. 149 - Page 47

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Sands, Metals, Minerals

Gold Mining Stock Outlook

Why Buying Gold Is No Longer Advisable--
It's a Must. New Report.

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TEN YEARS AGO, time was rapidly running out on the Last Chance Mine. Its glory days as one of Creede's richest silver mines were long past, and decades of inactivity had left its rutted access road nearly impassable. Perched precariously on a canyon wall high above West Willow Creek, the mine itself was little more than some collapsed portals, a sagging ore bin, a few decrepit cabins, and piles of rock strewn with bleached timbers and rusted cables.

Only a handful of souvenir hunters, mineral collectors, and history buffs even set foot on the mine property. One of those was Jack Morris, a Missouri truck driver who spent his summer vacations in Creede, pursuing an interest in minerals and mining history. Morris's visits to the Last Chance changed both his life and the fading fortunes of the old silver mine.

"There was something about the Last Chance that just hooked me," Morris recalls. "It was more than old timbers, rusted metal, and broken rock. What I saw was a dramatic location, a great view, heaps of beautiful ore minerals, and a rich history that was just fading away with each passing year."

Today, Morris owns the Last Chance. And each summer he welcomes some 600 visitors who enjoy the mountain scenery, photograph the ruins, collect specimens of amethyst-silver ore, and listen to tales of the mine's history. Some also stay in mine cabins that Morris has restored.

The Last Chance was the site of the last major silver strike in what would turn out to be Colorado's last big silver-mining district. Colorado's other silver camps, including Georgetown, Leadville, Aspen, Ouray, and Silverton, were already declining when prospector Nicholas Creede discovered silver in 1889 in an out-of-the-way location in the eastern San Juan Mountains. Creede named his find -- an outcropped quartz vein with rich lead-silver mineralization -- the Holy Moses Lode. The boomtown of Creede that sprang up nearby was named in his honor.



The following year prospectors made a succession of similar strikes along linear trends that followed long, continuous vein-type deposits. Miners named three of these veins the Solomon-Moses, Mammoth, and Alpha-Corsair. The largest and richest of all was named for its unusual abundance of distinctive purple quartz -- the Amethyst Vein.

At the time of the Creede discoveries, mineral exploration was still largely a matter of luck. And that had eluded prospector Theodore Renninger. After fruitlessly searching the rhyolite canyons north of Creede during 1890, Renninger was broke and about to give up. But when Del Norte butchers Ralph Granger and Erick von Buddenbrock offered to grubstake him with \$25 and three burros, Renninger decided to give it one more try.

KNOWING THIS would be his last chance to strike it rich, Renninger set out again in August 1891. But things went wrong from the start. First, his burros wandered off, and when he finally caught up with them high on the side of Bachelor Ridge, the stubborn animals refused to move. Frustrated and weary, Renninger decided to prospect right where he was.

This time, luck was with him. Renninger discovered a weathered outcrop of mineralized, amethyst quartz containing a whopping 1,500 troy ounces of silver per ton. He aptly named his strike, which marked the northern end of the Amethyst Vein, the Last Chance.

Renninger then sought the confidential advice of Nicholas Creede, the dean of Creede prospectors. When Creede inspected Renninger's find, he was stunned by its richness and advised him to register his claims as quietly and as quickly as possible. Creede's advice proved somewhat self-serving. As soon as Renninger had registered his claims, Creede, wasting no time in actual prospecting, simply staked the adjacent lower ground between Renninger's strike and the southern part of the Amethyst Vein. Creede's claims were immediately developed as the Amethyst Mine.



The Creede district shipped its first silver -- a modest 380,000 troy ounces -- in 1891. But when the Last Chance and Amethyst mines opened the following year, the district's silver output jumped to 2.4 million troy ounces. By 1893, district production had soared again, this time to 4.8 million troy ounces (about 150 metric tons) worth \$6 million.

"By then," Morris explains, "Ralph Granger, one of the Del Norte butchers who had grubstaked Renninger, had become the sole owner of the Last Chance. In just 18 months, his share of the Last Chance profits had enabled him to buy out the interests of both Renninger and von Buddenbrock for \$150,000 in cash. The mine would stay in the Granger family until I bought it more than a century later."

Ironically, Creede's emergence as a major silver producer coincided with the silver crash of 1893. With hundreds of western mines flooding the silver market, prices remained strong only because the Sherman Silver Purchase Act of 1890 required the U.S. Treasury to purchase silver far in excess of its actual coinage needs. But when Congress bowed to eastern political pressure in 1893 and repealed the act, plummeting silver prices closed western silver mines by the hundreds. The camps most vulnerable to the price collapse were those working lower-grade ores. Leadville was particularly hard-hit because its

average ore grade had already dropped below 40 troy ounces of silver per ton.

Although Creede did not entirely escape the effects of the silver-market crash, the extraordinarily high-grade ores in many of its mines more than compensated for the depressed silver prices. Mines like the Last Chance and the Amethyst continued to rack up huge profits on Amethyst Vein ore that averaged several hundred troy ounces of silver per ton.

THE AMETHYST VEIN was a mineralogical wonder, stretching nearly three miles in length, with lower-grade, lead-silver mineralization extending outward 50 feet from its center. The vein's core was as thick as 15 feet and had a geode-like, concentric structure. Its outermost section consisted of dark quartz rich in lead-silver sulfides, followed by a delicately banded layer of white or bluish agate, another layer of dark, mineralized quartz, and then a layer of amethystine quartz. The latter made up half the total weight of the vein and contained crystals of silver-lead sulfides and green fluorite, along with bits of native silver.

The center of the vein was either hollow or filled with heavy masses of silver-lead sulfides and native silver that graded to 2,000 troy ounces of silver per ton. Many vein sections consisted of composite geodes with multiple cores surrounded by pale-blue, banded, "sowbelly" agate.

At its peak, the Last Chance Mine had 75 employees and a 1,400-foot-long inclined shaft that served 13 underground levels. The mine operated almost continuously under unified management from 1891 until 1947. The Granger family then leased different underground sections to individual teams of miners.

After lease-mining finally ended in the early 1960s, the Last Chance remained idle for ten years. But when silver prices soared during the 1970s, the Granger family hired contractors to "mine" the surface dumps. Some of this dump rock, considered waste by Creede standards of the 1890s, contained as many as 38 troy ounces of silver per ton.



While contractors were mining the dumps, geologists and mining engineers were conducting underground surveys. Despite finding many remaining blocks of high-grade silver mineralization, the steep costs of modern development and environmental compliance precluded any resumption of underground mining.

By the 1970s, the Creede district was nearing the end of the line. After the Commodore, the last of Creede's original mines, closed in 1976, all remaining district production came solely from the Homestake Mining Company's Bulldog Mine. The Bulldog had opened in 1969 on silver-lead ore from the newly discovered Bulldog Vein. By the time the Bulldog closed in 1985, Creede's cumulative district production had topped 50 million troy ounces of silver and 100,000 tons of lead.

THE LAST CHANCE had already been shut down for more than 30 years when Jack Morris came along in 1995. As a professional trucker, Morris had hauled heavy equipment to mines in Missouri's lead-mining belt and Arizona's copper-mining belt. Along the way, he developed a strong interest in both mines and minerals. And in Creede, Morris found plenty of both, the most intriguing of which were the Last Chance Mine and its Amethyst Vein ore.

When Morris first encountered the Last Chance, the

mine was owned by Nancy Granger Schallen, the granddaughter of Ralph Granger, one of the Del Norte butchers who had grubstaked Theodore Renninger. Over the years, Granger had passed sole ownership of the mine on to his son Paul, who in turn eventually passed it on to his daughter Nancy.

"I introduced myself to Nancy and we talked often about the mine and its history," Morris recalls. "After awhile, she asked if I wanted to buy the mine. At first I didn't know what to say. But after thinking it over, I said yes, I did want to buy the mine -- but there was no way I could afford it."

Then Nancy asked Morris what he would do with the mine if he *could* afford to buy it.

"I told her I'd open it to the public, then compile and preserve its history, sell Amethyst Vein specimens to collectors, and put the proceeds toward restoration," Morris replied.

Upon hearing that, Nancy Granger Schallen offered to sell the Last Chance to Jack Morris for nothing more than its assessed tax value.

Morris bought the mine in 1997. Three years later he moved to Creede and, together with his wife Kim, began restoring three mine buildings. In 2002, they opened the Last Chance Mine as a fee mineral-collecting site and historic attraction.

Morris charges no admission to the Last Chance. Everyone is welcome to explore and photograph the property and listen to Morris recount the mine's history. The fee to remove Amethyst Vein specimens from the mine dump is \$2 per pound. Collectors usually take home between 10 to 40 pounds, most of it sowbelly agate in small pieces for tumbling and larger pieces for display or cutting. The biggest single piece collected to date was a 300-pound boulder of Amethyst Vein rock for use as a yard display. For those who wish to bring home souvenirs, but not collect them, Morris offers a large selection of attractive specimens for sale.

Along with superb amethyst, native silver, and agate specimens, the Last Chance has also yielded small amounts of turquoise. Along with mines at Leadville, Cripple Creek, Manassas, and Bonanza, it's one of Colorado's five turquoise sources.



THE LAST CHANCE provides accommodations for up to 12 guests in restored cabins where water, wood, and bedding are provided. While use of the cabins is free, Morris gratefully accepts donations for his mine-restoration fund.

In the future, Morris plans to open the Nancy Granger Schallen Museum with displays of minerals, mining equipment, and artifacts from the Last Chance and other Creede mines. Morris is also consulting with state mine inspectors about the safety, ventilation, communication, and lighting requirements necessary for approval of public tours on one level of the historic mine.

Located five miles north of Creede on the South Loop of the Bachelor Historic Tour, the Last Chance is open to visitors from Memorial Day weekend until October snowfall sets the closing date.

For further information about the Last Chance Mine, contact Jack and Kim Morris at 719-275-0896 or 719-238-7959, or at 1234 S. 11th St., Canon City CO 81212.

Or check out the website at www.lastchancemine.com.

Steve Voynick, a former miner, has written many books and articles about mining, and lives in Twin Lakes.

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Exhibit 38

Valley Courier Article

January 24, 2008

Wrestling weekend

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Have you — heard? —

Explorer Post seeks members

ALAMOGOSA — The Alamogosa Law Enforcement Explorer's Post 260 invites all young people age 9 through 20 to join the group. Through the Post, young people learn about professional law enforcement, respect, friendship and self-esteem. Post membership teaches young people about careers in law enforcement and the profession itself. If interested, contact Alamogosa County Sheriff Dave Strong at 689-6608 or come to the next Post meeting at 6 p.m. Fri., Feb. 1 at the Alamogosa Sheriff's Office, 1815 17th St.

Blanca turns 100
this year

Commission won't back plans to return rail to Creede

By RANDY CAMERON
CREEDE — After nearly two hours of discussion with residents of the county, the Mineral County Commissioners on Wednesday voted unanimously not to write a letter of support for plans to bring railroad tourism to Creede and Mineral County.

Don Shank, president and executive director of the Denver and Rio Grande Railway Historical Foundation had asked the commissioners to prepare the letter in support of his intent to do railroad businesses in the county.

A large turnout crowded the

County Courthouse, and those who addressed the issue in response to chairman Zeke Ward's offer for individual comments, were overwhelming in their opposition not only to the letter of support, but to the plans for the railroad to come to Creede. Of the 37 persons who rose to speak, 36 of them spoke out against the letter and in favor of a City of Creede application to "the abandonment of all of the track of the Denver and Rio Grande Railway Historical Foundation located within the city limits."

The track cited in the application by the city to the Surface Transportation Board is about a mile in length and runs roughly from the ballpark at the south end of town to the city offices at the north end of Creede. The City of Creede claims it "owns the property that underlies the track in the city limits" and needs to plan how this publicly owned land can best be used, in-

proved and developed for the long term benefit for the town and its residents and businesses.

Many of those who spoke echoed and underlined the comments of Damon Gibbons, a local guest ranch employee who also has plans to open a business in Creede. "Instead of no action," he said, "I would like to see the commissioners stand in solidarity behind the city and join them in supporting the adverse abandonment in the city limits. I think that is the type of commissioners we elected and that we will elect in the future."

At first, it appeared that there would be no action taken by the commissioners on the issue. Commissioner Karl Kolisch was not present at the beginning of the session. Ward explained to the gathering that for a vote to be held on whether or not to write or not write the letter of support, a motion to vote on it must be moved and

seconded. He further explained that as chairman, he could second a motion but could not introduce one. When Commissioner Billy Philbert declined to make a motion no action could be taken.

But when Kolisch arrived more than an hour after the meeting began, those assembled, vocally and vigorously demanded that the proposal be addressed and voted on. After expressing concerns that if the right of way were lost, it might not be possible to get it back if it should be necessary for some unforeseeable reason in the future, Kolisch moved that the commissioners not write the letter of support. "As commissioners we represent the residents of the county, and I am going to abide by the wishes of those here today," he said.

When Ward then seconded the motion, the courtroom burst into applause and then all three coun-

missioners voted in favor of the motion not to write the letter.

Shank, who was present at the meeting and responded to some of the comments on several occasions said after the vote was taken that he was not surprised by the outcome or by the community and reactions of those present. "They have been outspoken on this issue all along," he said. "Today was no exception."

Shank also questioned the city's contention that it owns the land under the track in the Creede city limits. "That is a bold assumption on their part," he said. "The Attorney General's Office in Colorado has stated that it can't be determined at this time who owns it." He said he was referring to Section 36, which he said contained the bulk of the yard and depot, adding that if the city is going to continue to assert that it owns the land in question they must prove it.

Mineral Co. denies railroad support

A GIRL'S BEST FRIEND

Canter online